

CERTIFIED FOR PARTIAL PUBLICATION\*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Butte)

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THE PEOPLE,

Plaintiff and Respondent,

v.

JIMMY RAY SANDERS,

Defendant and Appellant.

C058341

(Super. Ct. No. CM028123)

APPEAL from a judgment of the Superior Court of Butte County, Sandra L. McLean, Judge. Affirmed.

Robert L. S. Angres, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Michael A. Canzoneri, Supervising Deputy Attorney General, Angelo S. Edralin, Deputy Attorney General, for Plaintiff and Respondent.

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\* Pursuant to California Rules of Court, rule 8.110, this opinion is certified for publication with the exception of part II.

Defendant Jimmy Ray Sanders was committed to the California Rehabilitation Center (CRC) after pleading guilty to domestic violence on a cohabitant (Pen. Code, § 273.5, subd. (a)) and no contest to vandalism (Pen. Code, § 594, subd. (a)), and being sentenced by the trial court to three years and eight months in state prison. On appeal, he contends the waiver he signed pursuant to Welfare and Institutions Code<sup>1</sup> section 3053 waiving his right to be present at a hearing to impose sentence in the event of his rejection or disqualification from CRC was unauthorized and must be stricken. He contends further that the sentence imposed on the vandalism charge should have been stayed pursuant to Penal Code section 654. We shall affirm the judgment.

#### **PROCEDURAL BACKGROUND<sup>2</sup>**

Defendant pled guilty to domestic violence on a cohabitant, and no contest to vandalism, in exchange for dismissal of a prior prison term allegation and other pending charges and a maximum prison sentence of three years and eight months. The court initially imposed a sentence of four years and eight months in state prison, then subsequently corrected itself and

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> The facts related to defendant's underlying offenses are relevant only to defendant's second contention on appeal and shall therefore be discussed as necessary in part II of this opinion.

resentenced defendant to a term of three years and eight months. Defendant admitted being addicted, or in imminent danger of addiction, to drugs and alcohol, waived a medical examination and requested referral to CRC. The court suspended criminal proceedings pursuant to section 3051 and granted defendant's request, ordering him committed to CRC. The court informed defendant that, in the event defendant were to be rejected or disqualified from CRC for any legal reason, it would not in any way modify the sentence imposed. Defendant provided the court with a signed waiver pursuant to section 3053, waiving his right to a return hearing in such event.

Defendant filed a timely notice of appeal.

## **DISCUSSION**

### **I.**

Defendant argues his section 3053 waiver contravenes his statutory right to a sentencing hearing following exclusion from the CRC and is therefore "invalid." We disagree.

Subdivision (a) of section 3053 provides, "If . . . the director of corrections concludes that the person . . . is not a fit subject for confinement or treatment in the . . . facility, he or she shall return the person to the court in which the case originated for further proceedings on the criminal charges that the court may deem warranted."

At the sentencing hearing, the court accepted and filed a "Waiver of WI 3053 Hearing" signed by defendant which states as

follows: "The Court having determined that should the defendant be rejected or disqualified from the California Rehabilitation Center program for any legal reason, the Court would not modify in any way the sentence imposed herein. [¶] I hereby waive my rights under Welfare and Institutions Code section 3053 to be returned to the Butte County Superior Court for further proceedings on the criminal charges should I be excluded from the C.R.C. program for any legal reason. [¶] I have discussed this waiver with my attorney and fully understand that should I be excluded from the C.R.C. program for any legal reason, the WI3051 civil proceedings will be terminated and the criminal proceedings reinstated without my returning by [sic] Butte County Superior Court, and that I will be transferred to a correctional facility to serve any remaining time on my sentence."

Defendant does not contend his waiver was invalid because it was unknowing or involuntary or in some other manner deficient. Rather, his argument is that the "shall" language in the statute requires a mandatory return hearing pursuant to section 3053 that cannot be waived. However, defendant cites no authority for this proposition, and we have found none. He merely asserts that a court acting beyond the limits set forth in any given statute is acting in excess of its jurisdiction, rendering those actions void. While that general assertion supports defendant's position that, under section 3053, the

trial court is required to follow particular procedures (i.e., hold a return hearing) when a defendant is excluded from CRC, it does not support defendant's claim that a defendant is prohibited from waiving those requirements.

Defendant argues further that his waiver is invalid given that a return hearing is a "key component of the statute, because only in this way can a defendant explain why his sentence should be modified and because only in this way, can he also have knowledge of the final judgment of the trial court so that he can file a timely notice of appeal." We are not persuaded. At its core, defendant's appeal seeks a return hearing in the event of exclusion from CRC so that defendant can renegotiate the sentence previously imposed but suspended pending commitment at CRC. However, that ship has already sailed. In addition to the language in his waiver, defendant was fully informed on the record at the hearing that the court does not intend to modify his sentence in the event he is excluded from CRC. As such, even if defendant were present at the hearing, a request to modify his sentence would fall on deaf ears. Further, we note he does not, on appeal, explain why in fact his sentence should be modified.

We are similarly unpersuaded by defendant's claim that his presence at the hearing is the only means by which he will learn of the judgment against him for purposes of filing an appeal. To the extent defendant has not yet been excluded from CRC, his

claim is premature. Assuming he is excluded sometime in the future, we have no reason to believe that he will not receive notice of the judgment against him. In short, he has not suffered any injury and therefore cannot demonstrate prejudice resulting from the waiver. (*People v. Mayfield* (1997) 14 Cal.4th 668, 738-739.)

## II.

Defendant contends the crimes of vandalism and corporal injury on a cohabitant were both part of "one indivisible transaction" and, as such, the sentence for vandalism should have been stayed pursuant to Penal Code section 654. The People argue defendant forfeited his claim for failure to raise it at the time sentence was imposed, and that his claim lacks merit in any event.

Defendant's failure to object to the sentence imposed by the trial court does not result in forfeiture of his claim because the waiver doctrine does not apply to questions involving the applicability of Penal Code section 654 unless a defendant has pled guilty in return for a specified sentence. (*People v. Hester* (2000) 22 Cal.4th 290, 295.) Here, defendant merely acknowledged the court's advisement of the maximum sentence; he remained free to argue for a lesser sentence. Nonetheless, defendant's claim fails on the merits.

After consuming a significant amount of alcohol, defendant drove his ex-girlfriend, D. S., from Oroville to Sacramento in a

rental car. Defendant began driving "probably [one] hundred miles an hour." D. S. screamed at him to stop the car. Defendant eventually skidded to a stop and turned onto a side street, where he grabbed D. S.'s cell phone, got out of the car and walked away. D. S. got out of the car, walked over to defendant and requested her phone. When defendant denied having it, D. S. walked back to the passenger side of the car and leaned in, looking for her phone. Suddenly, defendant approached the car and kicked the passenger door into D. S., denting the door and hitting D. S. so hard in the jaw and neck that she was almost knocked down. Injured and in shock, D. S. walked around the car and climbed into the driver's seat. Defendant climbed in the passenger side and began kicking the interior of the car, damaging the gear shift, the radio and the ignition switch. Patrick Foy, a warden with the Department of Fish and Game, was in the area at the time and noticed the car "rocking." He activated his emergency lights and approached the car. D. S. called out for help, telling Foy defendant was going to hurt her. Defendant got out of the car and approached Foy in an aggressive manner, but stopped when Foy drew his firearm and commanded defendant to stop.

Under Penal Code section 654, if two convictions are based on an indivisible course of conduct, the trial court may not properly impose sentence on both. Whether a course of criminal conduct is divisible and subject to multiple punishment depends

on the actor's intent and objective: "'If all the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one'"; however, where a defendant has "multiple criminal objectives which were independent of and not merely incidental to each other," multiple punishments may be imposed. (*People v. Beamon* (1973) 8 Cal.3d 625, 637, 639; accord, *People v. Hicks* (1993) 6 Cal.4th 784, 789.)

Whether the crimes were committed during an indivisible transaction is a question of fact to be determined by the trial court and the court's finding will not be disturbed on appeal where it is supported by substantial evidence. (*People v. Kwok* (1998) 63 Cal.App.4th 1236, 1253.) However, the Supreme Court has warned against "pars[ing] the objectives too finely" in analyzing potentially impermissible multiple punishments under section 654. (*People v. Britt* (2004) 32 Cal.4th 944, 953.)

The trial court's finding that "the crimes and their objectives were predominantly independent of each other[]" is supported by substantial evidence. While D. S. stood beside the open passenger door looking for her cell phone, defendant kicked the passenger door into her with enough force to "dent[]" the whole side of the car." The door hit D. S. in her neck and jaw, nearly knocking her down, and causing her neck to bleed. That act was aimed at inflicting injury on D. S., forming the basis for the charge of corporal injury on a cohabitant. D. S. then



walked around the car and climbed into the driver's seat, and defendant got into the passenger seat and began kicking the interior of the car. That act, as the trial court implicitly found, was aimed at damaging the car. The two criminal acts, though temporally proximate, were nonetheless motivated by separate criminal intents. Accordingly, the consecutive sentence for vandalism did not violate Penal Code section 654.

**DISPOSITION**

The judgment is affirmed.

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CANTIL-SAKAUYE, J.

We concur:

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BLEASE, Acting P. J.

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SIMS, J.